



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

PATENT
Petition W/D
Abn
#33

In Application of:

Mark W. Miles

Application No.: 09/413,222

Filing Date: October 5, 1999

For: PHOTONIC MEMS AND
STRUCTURESExaminer: Dang, Hung XuanArt Unit: 2873**FIRST CLASS CERTIFICATE OF MAILING (37 C.F.R. § 1.8(a))**

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail with sufficient postage in an envelope addressed to the Assistant Commissioner for Patents, Washington, D.C. 20231 on:

October 20, 2003

(Date of Deposit)

Karen L. Kuhner

(Name of Person Mailing Correspondence)

Karen L. Kuhner

(Signature)

10/20/2003

(Date)

Commissioner for Patents
P.O. Box 1450
Mail Stop: Issue Fee
Alexandria, VA 22313-1450

PETITION TO WITHDRAW HOLDING OF ABANDONMENT**UNDER 37 C.F.R. § 1.181(a)**

Dear Sir:

This is a petition to withdraw the Notice of Abandonment which was mailed to Applicant on August 29, 2003. Applicant believes the Notice of Abandonment was mailed in error according to the facts listed below and the attached exhibits.

1. Applicant received a Notice of Allowance and Issue Fee Due for Serial No. 09/413,222 which was mailed from the U.S. Patent and Trademark Office (hereinafter referred to as "Patent Office") on October 21, 2002. The due date for payment of the Issue Fee was January 21, 2003. A copy of this Notice of Allowance is attached hereto as Exhibit A.

2. On January 21, 2003, Applicant filed a Request for Continued Examination (RCE) under 37 C.F.R. § 1.114. A copy of the RCE transmittal is attached hereto as Exhibit B.

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3. The RCE was mailed First Class Mail. The postcard that accompanied the RCE was date-stamped by the Patent Office as being received on January 24, 2003. A copy of the postcard is attached hereto as Exhibit C.

4. Applicant received a Notice of Abandonment for Serial No. 09/413,222 which was mailed on August 29, 2003. The Notice of Abandonment indicated that Serial No. 09/413,222 was abandoned for failure to pay the Issue Fee in a timely manner. A copy of the Notice of Abandonment is attached hereto as Exhibit D.

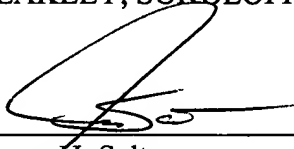
5. The filing of the RCE was proper under 37 C.F.R. § 1.114 and was within the time period for reply specified in the Notice of Allowance, thus making the Notice of Abandonment improper.

In the circumstances, Applicant petitions the Patent Office to withdraw the Notice of Abandonment.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP

Date: 12/20/, 2003



James H. Salter
Reg. No. 35,668

Customer No. 008791
12400 Wilshire Boulevard
Seventh Floor
Los Angeles, CA 90025-1026
(408) 720-8300



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

ENTERED

NOV - 1 2002 NOTICE OF ALLOWANCE AND FEE(S) DUE

DAVID L FEIGENBAUM ESQ
FISH & RICHARDSON PC
225 FRANKLIN ST
SUITE 3100
BOSTON, MA 02110

EXAMINER

DANG, HUNG XUAN

ART UNIT

CLASS-SUBCLASS

2873

345-540000

DATE MAILED: 10/21/2002

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/413,222	10/05/1999	MARK W. MILES	01568-010001	1748

TITLE OF INVENTION: PHOTONIC MEMS AND STRUCTURES

Docketed By Billing Secretary
Due Date: 1/21/03
Deadline:
Initials: JHS

APPLN. TYPE	SMALL ENTITY	ISSUE FEE	PUBLICATION FEE	TOTAL FEE(S) DUE	DATE DUE
nonprovisional	YES	\$640	\$0	\$640	01/21/2003

THE APPLICATION IDENTIFIED ABOVE HAS BEEN EXAMINED AND IS ALLOWED FOR ISSUANCE AS A PATENT. PROSECUTION ON THE MERITS IS CLOSED. THIS NOTICE OF ALLOWANCE IS NOT A GRANT OF PATENT RIGHTS. THIS APPLICATION IS SUBJECT TO WITHDRAWAL FROM ISSUE AT THE INITIATIVE OF THE OFFICE OR UPON PETITION BY THE APPLICANT. SEE 37 CFR 1.313 AND MPEP 1308.

THE ISSUE FEE AND PUBLICATION FEE (IF REQUIRED) MUST BE PAID WITHIN THREE MONTHS FROM THE MAILING DATE OF THIS NOTICE OR THIS APPLICATION SHALL BE REGARDED AS ABANDONED. THIS STATUTORY PERIOD CANNOT BE EXTENDED. SEE 35 U.S.C. 151. THE ISSUE FEE DUE INDICATED ABOVE REFLECTS A CREDIT FOR ANY PREVIOUSLY PAID ISSUE FEE APPLIED IN THIS APPLICATION. THE PTOL-85B (OR AN EQUIVALENT) MUST BE RETURNED WITHIN THIS PERIOD EVEN IF NO FEE IS DUE OR THE APPLICATION WILL BE REGARDED AS ABANDONED.

HOW TO REPLY TO THIS NOTICE:

I. Review the SMALL ENTITY status shown above.

If the SMALL ENTITY is shown as YES, verify your current SMALL ENTITY status:

- A. If the status is the same, pay the TOTAL FEE(S) DUE shown above.
- B. If the status is changed, pay the PUBLICATION FEE (if required) and twice the amount of the ISSUE FEE shown above and notify the United States Patent and Trademark Office of the change in status, or

If the SMALL ENTITY is shown as NO:

- A. Pay TOTAL FEE(S) DUE shown above, or
- B. If applicant claimed SMALL ENTITY status before, or is now claiming SMALL ENTITY status, check the box below and enclose the PUBLICATION FEE and 1/2 the ISSUE FEE shown above.
- ☐ Applicant claims SMALL ENTITY status.
See 37 CFR 1.27.

II. PART B - FEE(S) TRANSMITTAL should be completed and returned to the United States Patent and Trademark Office (USPTO) with your ISSUE FEE and PUBLICATION FEE (if required). Even if the fee(s) have already been paid, Part B - Fee(s) Transmittal should be completed and returned. If you are charging the fee(s) to your deposit account, section "4b" of Part B - Fee(s) Transmittal should be completed and an extra copy of the form should be submitted.

III. All communications regarding this application must give the application number. Please direct all communications prior to issuance to Box ISSUE FEE unless advised to the contrary.

IMPORTANT REMINDER: Utility patents issuing on applications filed on or after Dec. 12, 1980, may require payment of maintenance fees. It is patentee's responsibility to ensure timely payment of maintenance fees when due.

DOCKETED BY PRACTICE SYSTEMS
Action Code ISSUE FEE
Base Date 10-21-02
Due Date 12-21-02
Deadline 1-21-03
Initials REC On

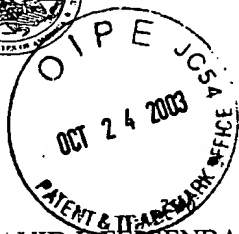
Page 1 of 4

ENTERED
JHS DB



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov



NOTICE OF ALLOWANCE AND FEE(S) DUE

10/21/2002

DAVID L. FEIGENBAUM ESQ
FISH & RICHARDSON PC
225 FRANKLIN ST
SUITE 3100
BOSTON, MA 02110

EXAMINER

DANG, HUNG XUAN

ART UNIT

CLASS-SUBCLASS

2873

345-540000

DATE MAILED: 10/21/2002

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/413,222	10/05/1999	MARK W. MILES	01568-010001	1748

TITLE OF INVENTION: PHOTONIC MEMS AND STRUCTURES

Docketed By Billing Secretary
Due Date: 11/21/03
Deadline: _____
Initials: Rja

APPLN. TYPE	SMALL ENTITY	ISSUE FEE	PUBLICATION FEE	TOTAL FEE(S) DUE	DATE DUE
nonprovisional	YES	\$640	\$0	\$640	01/21/2003

THE APPLICATION IDENTIFIED ABOVE HAS BEEN EXAMINED AND IS ALLOWED FOR ISSUANCE AS A PATENT. **PROSECUTION ON THE MERITS IS CLOSED.** THIS NOTICE OF ALLOWANCE IS NOT A GRANT OF PATENT RIGHTS. THIS APPLICATION IS SUBJECT TO WITHDRAWAL FROM ISSUE AT THE INITIATIVE OF THE OFFICE OR UPON PETITION BY THE APPLICANT. SEE 37 CFR 1.313 AND MPEP 1308.

THE ISSUE FEE AND PUBLICATION FEE (IF REQUIRED) MUST BE PAID WITHIN **THREE MONTHS** FROM THE MAILING DATE OF THIS NOTICE OR THIS APPLICATION SHALL BE REGARDED AS ABANDONED. **THIS STATUTORY PERIOD CANNOT BE EXTENDED.** SEE 35 U.S.C. 151. THE ISSUE FEE DUE INDICATED ABOVE REFLECTS A CREDIT FOR ANY PREVIOUSLY PAID ISSUE FEE APPLIED IN THIS APPLICATION. THE PTOL-85B (OR AN EQUIVALENT) MUST BE RETURNED WITHIN THIS PERIOD EVEN IF NO FEE IS DUE OR THE APPLICATION WILL BE REGARDED AS ABANDONED.

HOW TO REPLY TO THIS NOTICE:

I. Review the SMALL ENTITY status shown above.

If the SMALL ENTITY is shown as YES, verify your current SMALL ENTITY status:

A. If the status is the same, pay the TOTAL FEE(S) DUE shown above.

B. If the status is changed, pay the PUBLICATION FEE (if required) and twice the amount of the ISSUE FEE shown above and notify the United States Patent and Trademark Office of the change in status, or

If the SMALL ENTITY is shown as NO:

A. Pay TOTAL FEE(S) DUE shown above, or

B. If applicant claimed SMALL ENTITY status before, or is now claiming SMALL ENTITY status, check the box below and enclose the PUBLICATION FEE and 1/2 the ISSUE FEE shown above.

☐ Applicant claims SMALL ENTITY status.
See 37 CFR 1.27.

II. PART B - FEE(S) TRANSMITTAL should be completed and returned to the United States Patent and Trademark Office (USPTO) with your ISSUE FEE and PUBLICATION FEE (if required). Even if the fee(s) have already been paid, Part B - Fee(s) Transmittal should be completed and returned. If you are charging the fee(s) to your deposit account, section "4b" of Part B - Fee(s) Transmittal should be completed and an extra copy of the form should be submitted.

III. All communications regarding this application must give the application number. Please direct all communications prior to issuance to Box ISSUE FEE unless advised to the contrary.

IMPORTANT REMINDER: Utility patents issuing on applications filed on or after Dec. 12, 1980 may require payment of maintenance fees. It is patentee's responsibility to ensure timely payment of maintenance fees when due.

DOCKETED BY PRACTICE SYSTEMS

Action Code	ISSUE FEE
Base Date	10-21-02
Due Date	12-21-02
Deadline	1-21-03
Initials	PEC On



PART B - FEE(S) TRANSMITTAL

Complete and send this form, together with applicable fee(s), to: **Mail** Box ISSUE FEE
Commissioner for Patents
Washington, D.C. 20231
Fax (703)746-4000

INSTRUCTIONS: This form should be used for transmitting the ISSUE FEE and PUBLICATION FEE (if required). Blocks 1 through 4 should be completed where appropriate. All further correspondence including the Patent, advance orders and notification of maintenance fees will be mailed to the current correspondence address as indicated unless corrected below or directed otherwise in Block 1, by (a) specifying a new correspondence address; and/or (b) indicating a separate "FEE ADDRESS" for maintenance fee notifications.

CURRENT CORRESPONDENCE ADDRESS (Note: Legibly mark-up with any corrections or use Block 1)

7590 10/21/2002

DAVID L FEIGENBAUM ESQ
FISH & RICHARDSON PC
225 FRANKLIN ST
SUITE 3100
BOSTON, MA 02110

Note: A certificate of mailing can only be used for domestic mailings of the Fee(s) Transmittal. This certificate cannot be used for any other accompanying papers. Each additional paper, such as an assignment or formal drawing, must have its own certificate of mailing or transmission.

Certificate of Mailing or Transmission

I hereby certify that this Fee(s) Transmittal is being deposited with the United States Postal Service with sufficient postage for first class mail in an envelope addressed to the Box Issue Fee address above, or being facsimile transmitted to the USPTO, on the date indicated below.

(Depositor's name)
(Signature)
(Date)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/413,222	10/05/1999	MARK W. MILES	01568-010001	1748

TITLE OF INVENTION: PHOTONIC MEMS AND STRUCTURES

APPLN. TYPE	SMALL ENTITY	ISSUE FEE	PUBLICATION FEE	TOTAL FEE(S) DUE	DATE DUE
nonprovisional	YES	\$640	\$0	\$640	01/21/2003

EXAMINER	ART UNIT	CLASS-SUBCLASS
DANG, HUNG XUAN	2873	345-540000

1. Change of correspondence address or indication of "Fee Address" (37 CFR 1.363).

- ☐ Change of correspondence address (or Change of Correspondence Address form PTO/SB/122) attached.
- ☐ "Fee Address" indication (or "Fee Address" Indication form PTO/SB/47; Rev 03-02 or more recent) attached. Use of a Customer Number is required.

2. For printing on the patent front page, list (1) the names of up to 3 registered patent attorneys or agents OR, alternatively, (2) the name of a single firm (having as a member a registered attorney or agent) and the names of up to 2 registered patent attorneys or agents. If no name is listed, no name will be printed.

1 _____
2 _____
3 _____

3. ASSIGNEE NAME AND RESIDENCE DATA TO BE PRINTED ON THE PATENT (print or type)

PLEASE NOTE: Unless an assignee is identified below, no assignee data will appear on the patent. Inclusion of assignee data is only appropriate when an assignment has been previously submitted to the USPTO or is being submitted under separate cover. Completion of this form is NOT a substitute for filing an assignment.

(A) NAME OF ASSIGNEE

(B) RESIDENCE: (CITY and STATE OR COUNTRY)

Please check the appropriate assignee category or categories (will not be printed on the patent) ☐ individual ☐ corporation or other private group entity ☐ government

4a. The following fee(s) are enclosed:

- ☐ Issue Fee
- ☐ Publication Fee
- ☐ Advance Order - # of Copies _____

4b. Payment of Fee(s):

- ☐ A check in the amount of the fee(s) is enclosed.
- ☐ Payment by credit card. Form PTO-2038 is attached.
- ☐ The Commissioner is hereby authorized by charge the required fee(s), or credit any overpayment, to Deposit Account Number _____ (enclose an extra copy of this form).

Commissioner for Patents is requested to apply the Issue Fee and Publication Fee (if any) or to re-apply any previously paid issue fee to the application identified above.

(Authorized Signature)

(Date)

NOTE: The Issue Fee and Publication Fee (if required) will not be accepted from anyone other than the applicant; a registered attorney or agent; or the assignee or other party in interest as shown by the records of the United States Patent and Trademark Office.

This collection of information is required by 37 CFR 1.311. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, Washington, D.C. 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, Washington, DC 20231.

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.



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TRANSMIT THIS FORM WITH FEE(S)



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UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/413,222	10/05/1999	MARK W. MILES	01568-010001	1748

7590 10/21/2002

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FISH & RICHARDSON PC
225 FRANKLIN ST
SUITE 3100
BOSTON, MA 02110

EXAMINER

DANG, HUNG XUAN

ART UNIT PAPER NUMBER

2873

DATE MAILED: 10/21/2002

Determination of Patent Term Extension under 35 U.S.C. 154 (b)
(application filed after June 7, 1995 but prior to May 29, 2000)

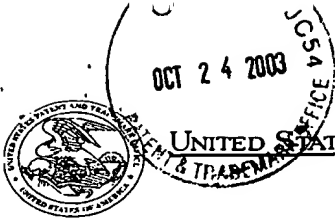
The patent term extension is 0 days. Any patent to issue from the above identified application will include an indication of the 0 day extension on the front page.

If a continued prosecution application (CPA) was filed in the above-identified application, the filing date that determines patent term extension is the filing date of the most recent CPA.

Applicant will be able to obtain more detailed information by accessing the Patent Application Information Retrieval (PAIR) system. (<http://pair.uspto.gov>)

Any questions regarding the patent term extension or adjustment determination should be directed to the Office of Patent Legal Administration at (703)305-1383.

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UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/413,222	10/05/1999	MARK W. MILES	01568-010001	1748
7590 10/21/2002			EXAMINER	
DAVID L FEIGENBAUM ESQ FISH & RICHARDSON PC 225 FRANKLIN ST SUITE 3100 BOSTON, MA 02110			DANG, HUNG XUAN	
			ART UNIT	PAPER NUMBER
			2873	
DATE MAILED: 10/21/2002				

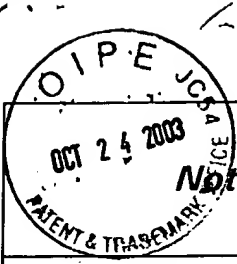
Notice of Possible Fee Increase on October 1, 2002

If a reply to a "Notice of Allowance and Fee(s) Due" is filed in the Office on or after October 1, 2002, then the amount due may be higher than that set forth in the "Notice of Allowance and Fee(s) Due" since there may be an increase in fees effective on October 1, 2002. See Revision of Patent and Trademark Fees for Fiscal Year 2003: Notice of Proposed Rulemaking, 67 Fed. Reg. 30634, 30636 (May 7, 2002). Although a change to the amount of the publication fee is not currently proposed for October 2002, if the issue fee or publication fee is to be paid on or after October 1, 2002, applicant should check the USPTO web site for the current fees before submitting the payment. The USPTO Internet address for the fee schedule is: <http://www.uspto.gov/main/howtofees.htm>.

If the issue fee paid is the amount shown on the "Notice of Allowance and Fee(s) Due," but not the correct amount in view of any fee increase, a "Notice to Pay Balance of Issue Fee" will be mailed to applicant. In order to avoid processing delays associated with mailing of a "Notice to Pay Balance of Issue Fee," if the response to the Notice of Allowance and Fee(s) due form is to be filed on or after October 1, 2002 (or mailed with a certificate of mailing on or after October 1, 2002), the issue fee paid should be the fee that is required at the time the fee is paid. If the issue fee was previously paid, and the response to the "Notice of Allowance and Fee(s) Due" includes a request to apply a previously-paid issue fee to the issue fee now due, then the difference between the issue fee amount at the time the response is filed and the previously paid issue fee should be paid. See Manual of Patent Examining Procedure, Section 1308.01 (Eighth Edition, August 2001).

Questions relating to issue and publication fee payments should be directed to the Customer Service Center of the Office of Patent Publication at (703) 305-8283.

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Notice of Allowability

Application No. 09/413,222	Applicant(s) Miles
Examiner Hung X. Dang	Art Unit 2873

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 8/20/02
2. ☒ The allowed claim(s) is/are 5, 6, 52, 53, and 55-61
3. ☐ The drawings filed on _____ are accepted by the Examiner.

DOCKETED BY PRACTICE SYSTEMS

Action Code US Allowability
Base Date 10-21-02
Due Date 12-21-02
Deadline 1-21-03
Initials PEC On _____

4. ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a):
- a) ☐ All b) ☐ Some* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

5. ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- (a) ☐ The translation of the foreign language provisional application has been received.
6. ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application. **THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

7. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
8. ☒ CORRECTED DRAWINGS must be submitted.
- (a) ☒ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☒ to Paper No. 10.
- (b) ☐ including changes required by the proposed drawing correction filed _____, which has been approved by the examiner.
- (c) ☐ including changes required by the attached Examiner's Amendment/Comment or in the Office action of Paper No. _____.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the top margin (not the back) of each sheet. The drawings should be filed as a separate paper with a transmittal letter addressed to the Official Draftsperson.

9. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|--|---|
| 1 <input type="checkbox"/> Notice of References Cited (PTO-892) | 2 <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3 <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 4 <input type="checkbox"/> Interview Summary (PTO-413), Paper No. _____ |
| 5 <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449), Paper No(s). _____ | 6 <input type="checkbox"/> Examiner's Amendment/Comment |
| 7 <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit of Biological Material | 8 <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance |
| 9 <input type="checkbox"/> Other | |

Docketed By Billing Secretary
Due Date: _____
Deadline: _____
Initials: _____

Art Unit: 2873

Reasons For Allowance

1. The following is an Examiner's Statement of Reasons for Allowance:


the prior art taken either singly or in combination fails to anticipate or fairly suggest that which the Applicant claims in claim 5 in a manner which would warrant a rejection under 35 U.S.C. § 102 or 35 U.S.C. § 103.

There was no prior art found by the examiner that suggested modification or combination with the cited prior art so as to satisfy the combination of the present independent claim 5; especially, the prior art does not provide release of the device occurring when the difference between the values of the data voltage and the select voltage is below a second predetermined level lowest, and the device maintaining its state when the select voltage is at the bias level as recited by claim 5.

Any comments considered necessary by applicant must be submitted no later than the payment of the Issue Fee and, to avoid processing delays, should preferably **accompany** the Issue Fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

2. Any inquiry concerning this communication should be directed to Examiner Dang at telephone number (703) 308-0550.

9/02


Hung Xuan Dang
Primary Examiner

Art Unit: 2873

Reasons For Allowance

1. The following is an Examiner's Statement of Reasons for Allowance:

the prior art taken either singly or in combination fails to anticipate or fairly suggest that which the Applicant claims in claim 5 in a manner which would warrant a rejection under 35 U.S.C. § 102 or 35 U.S.C. § 103.

There was no prior art found by the examiner that suggested modification or combination with the cited prior art so as to satisfy the combination of the present independent claim 5; especially, the prior art does not provide release of the device occurring when the difference between the values of the data voltage and the select voltage is below a second predetermined level lowest, and the device maintaining its state when the select voltage is at the bias level as recited by claim 5.

Any comments considered necessary by applicant must be submitted no later than the payment of the Issue Fee and, to avoid processing delays, should preferably **accompany** the Issue Fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

2. Any inquiry concerning this communication should be directed to Examiner Dang at telephone number (703) 308-0550.

9/02


Hung Xuan Dang
Primary Examiner



Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

REQUEST FOR CONTINUED EXAMINATION (RCE) TRANSMITTAL

Address to:
Commissioner for Patents
BOX RCE
Washington, DC 20231

Application No.	09/413,222
Filing Date	October 5, 1999
First Named Inventor	Mark W. Miles
Group Art Unit	2873
Examiner Name	Dang, Hung X.
Attorney Docket Number	5652P016X

This is a Request for Continued Examination (RCE) under 37 C.F.R. § 1.114 of the above-identified application.
Request for Continued Examination (RCE) practice under 37 CFR § 1.114 does not apply to any utility or plant application filed prior to June 8, 1995, or to any design application. See Instruction Sheet for RCEs (not to be submitted to the USPTO) on page 2.

1. Submission required under 37 C.F.R. § 1.114

- a. ☐ Previously submitted
- i. ☐ Consider the amendment(s)/reply under 37 C.F.R. § 1.116 previously filed on
(Any unentered amendment(s) referred to above will be entered).
- ii. ☐ Consider the arguments in the Appeal Brief or Reply Brief previously filed on
- iii. ☐ Other _____
- b. ☒ Enclosed
- i. ☐ Amendment/Reply
- ii. ☐ Affidavit(s)/Declaration(s)
- iii. ☒ Information Disclosure Statement (IDS)
- iv. ☐ Other _____

2. Miscellaneous

- a. ☐ Suspension of action on the above-identified application is requested under 37 C.F.R. § 1.103(c) for a period of _____ months. (Period of suspension shall not exceed 3 months; Fee under 37 C.F.R. § 1.17(i) required)
- b. ☐ Other _____

3. Fees

The RCE fee under 37 C.F.R. § 1.17(e) is required by 37 C.F.R. § 1.114 when the RCE is filed.

- a. ☐ The Director is hereby authorized to charge the following fees, or credit any overpayments, to Deposit Account No. 02-2666.
- i. ☒ RCE fee required under 37 C.F.R. § 1.17(e)
- ii. ☐ Extension of time fee (37 C.F.R. § 1.136 and 1.17)
- iii. ☐ Other: (\$00) _____
- b. ☒ Check in the amount of \$375.00 enclosed
- c. ☐ Payment by credit card (Form PTO-2038 enclosed)

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT REQUIRED

Name (Print/Type)	James H. Salter	Registration No. (Attorney/Agent)	35,668
Signature		Date	1/21/03

CERTIFICATE OF MAILING OR TRANSMISSION

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class mail with sufficient postage in an envelope addressed to: Box RCE, Assistant Commissioner for Patents, Washington, D.C. 20231 on:

Name (Print/Type)	Dawn Shaw	Date	1-21-03
Signature			

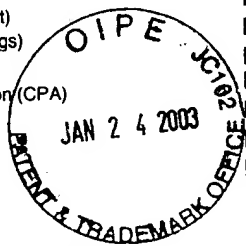
Application No.: 09/413,222 Filing Date: 10/05/99 8972 Docket #: 005652.P016X Atty/Sec: JHS/VXM/ds
Date Mailed: 01/21/2003 Docket Due Date(s): 01/21/2003 Client: Iridigm Display Corporation
Title Photonic MEMS and Structures

Inventor(s) Miles

The following has been received in the U.S. Patent & Trademark Office on the date stamped hereon:

- | | |
|--|--|
| <input type="checkbox"/> Amendment: (<u> </u> pgs) | <input checked="" type="checkbox"/> Information Disclosure Statement & PTO/SB/08 (<u>3</u> pgs) |
| <input type="checkbox"/> Appeal Brief & two copies (<u> </u> pgs) | <input type="checkbox"/> Issue Fee Transmittal (original & copy) |
| <input type="checkbox"/> Application:
(<u> </u> pages w/ cover & abstract) | <input type="checkbox"/> Nonpublication Request Under 35 U.S.C. 122(b)(2)(B)(i) |
| <input type="checkbox"/> Assignment & Cover Sheet (<u> </u> pgs) | <input type="checkbox"/> Notice of Appeal |
| <input checked="" type="checkbox"/> Certificate of Mailing | <input type="checkbox"/> Petition for: <u> </u> |
| <input type="checkbox"/> Continued Prosecution Application (CPA) | <input checked="" type="checkbox"/> Request for Continued Examination (RCE) |
| <input type="checkbox"/> Declaration & POA (<u> </u> pgs) | <input type="checkbox"/> Reply Brief (<u> </u> pgs) |
| <input type="checkbox"/> Drawings: <u> </u> sheets, <u> </u> figures | <input type="checkbox"/> Request to Rescind Previous Nonpublication Request |
| <input type="checkbox"/> Express Mail No: <u> </u> | <input type="checkbox"/> Response to Notice of Missing Parts & Formalities Letter |
| <input type="checkbox"/> Extension of Time: <u> </u> | <input type="checkbox"/> Terminal Disclaimer |
| <input checked="" type="checkbox"/> Fee Transmittal (original & copy) | <input type="checkbox"/> Transmittal of Formal Drawings |
| <input checked="" type="checkbox"/> Other <u>Request for Continued Examination (RCE)</u> | <input type="checkbox"/> Transmittal of Publication Fee Due |
| <u>Return Postcard</u> | <input checked="" type="checkbox"/> Transmittal Letter |
| SV <u>Cited Art (13)</u> | <input checked="" type="checkbox"/> Check No. <u>55143</u> in the Amount of <u>\$375.00</u> |
| | <input type="checkbox"/> Check No. <u> </u> in the Amount of <u> </u> |

Assignee: Iridigm Display Corporation





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United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/413,222	10/05/1999	MARK W. MILES	01568-010001	1748

26161 7590 08/29/2003

FISH & RICHARDSON PC
225 FRANKLIN ST
BOSTON, MA 02110

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SEP 9 2003
DAVID FEIGENBAUM

EXAMINER

DANG, HUNG XUAN

ART UNIT PAPER NUMBER

2873

DATE MAILED: 08/29/2003

p # 31

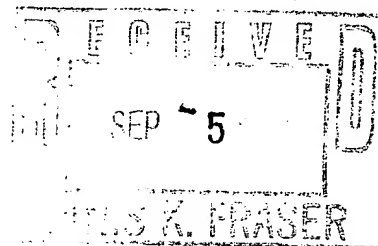
Please find below and/or attached an Office communication concerning this application or proceeding.

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DAVID FEIGENBAUM

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BOSTON OFFICE

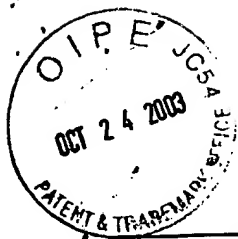


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* No Docketing Required *	
Reviewed By Practice Systems	Initials: JHS
Reviewed By Billing Secretary	Initials:

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BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN
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**UNITED STATES DEPARTMENT OF COMMERCE
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APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.
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09/413,222

EXAMINER

ART UNIT	PAPER NUMBER
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DATE MAILED:

p # 31

NOTICE OF ABANDONMENT

This application is abandoned in view of:

- ☐ Applicant's failure to timely file a proper response to the Office letter mailed on _____.
- ☐ A response (with a Certificate of Mailing or Transmission of _____) was received on _____, which is after the expiration of the period for response (including a total extension of time of _____ month(s)) which expired on _____.
- ☐ A proposed response was received on _____, but it does not constitute a proper response to the final rejection.

(A proper response to a final rejection consists only of: a timely filed amendment which places the application in condition for allowance; a Notice of Appeal; or the filing of a continuing application under 37 CFR 1.62 (FWC).

- ☐ No response has been received.
- ☒ Applicant's failure to timely pay the required issue fee within the statutory period of three months from the mailing date of the Notice of Allowance.

- ☐ The issue fee (with a Certificate of Mailing or Transmission of _____) was received on _____.
- ☐ The submitted issue fee of \$_____ is insufficient. The issue fee required by 37 CFR 1.18 is \$_____.
- ☒ The issue fee has not been received.

- ☐ Applicant's failure to timely file new formal drawings as required in the Notice of Allowability.
- ☐ Proposed new formal drawings (with a Certificate of Mailing or Transmission of _____) were received on _____.
- ☐ The proposed new formal drawings filed _____ are not acceptable.
- ☐ No proposed new formal drawings have been received.

- ☐ The express abandonment under 37 CFR 1.62(g) in favor of the FWC application filed on _____.
- ☐ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.

- ☐ The letter of express abandonment which is signed by an attorney or agent (acting in-a representative capacity under 37 CFR 1.34(a) upon the filing of a continuing application.

- ☐ The decision by the Board of Patent Appeals and Interferences rendered on _____ and because the period for seeking court review of the decision has expired and there are no allowed claims.

- ☐ The reason(s) below:

ABANDONMENT
CONTACT PERSON IS:
TOM HAWKINS
305-8380

Respond to the Notice of Abandonment by one of the following:

Petition To Withdraw Holding of Abandonment (See MPEP 711.03(c) I) and 37 CFR § 1.181) No fee required

Where an applicant contends that the application is not in fact abandoned (e.g., there is disagreement as to the sufficiency of the reply, or as to controlling dates), a petition under 37 CFR § 1.181(a) requesting withdrawal of the holding of abandonment is the appropriate course of action. Any petition under 37 CFR § 1.181, to withdraw the holding of abandonment not filed within 2 months of the mail date of a Notice of Abandonment may be dismissed as untimely under 37 CFR § 1.181(f).

In order for a petition to be granted, the evidence must be sufficient according to one of the following standards:

- 37 CFR § 1.8(b) Certificate of Mailing
- 37 CFR § 1.10 "Express Mail" mailing
- MPEP 503 Postcard Receipt as Prima Facie Evidence

Petition To Withdraw Holding Of Abandonment should be addressed as follows:

By mail: Commissioner For Patents, P.O. Box 1450, Mail Stop: Issue Fee, Alexandria, VA
22313-1450

By facsimile: 703-305-8755 or 703-305-4372

Petition To Withdraw Holding Of Abandonment Based On Failure To Receive Office Action (See MPEP 711.03(c) II). No fee required

Where an applicant contends that the original Notice of Allowance and Issue Fee Due was never received. If adequately supported, the Office may grant the petition and remail the Office action. The showing required establishing non-receipt of an Office communication must include a statement from the practitioner stating that the Office communication was not received and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the nonreceived Office would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.

Petition should be addressed to the Technology Center handling the application as follows:

By mail: Commissioner For Patents, P.O. Box 1450, Alexandria, VA 22313-1450
(Mark attention of a particular office or individual)

By facsimile: Technology Center numbers posted at <http://www.uspto.gov/september1/faxnotice.htm>

Petition To Revive An Abandoned Application (See MPEP 711.03(c) III)

Where there is no dispute as to whether an application is abandoned (e.g. the applicant's contentions merely involve the cause of abandonment) a petition under 37 CFR § 1.137 (a) unavoidable or (b) unintentionally (accompanied by the appropriate petition fee) is necessary to revive the abandoned application.

Petitions under 37 CFR § 1.137 should be addressed to the Office of Petitions as follows:

By mail: Commissioner For Patents, P.O. Box 1450, Alexandria, VA 22313-1450

By hand: Crystal Plaza 4, Rm. 3C23, 2201 Clark Place, Arlington, VA

By facsimile: 703-308-6916

Petition For Revival Of An Application For Patent Abandoned Unavoidably Under 37 CFR § 1.137(a) and Unintentionally Under 37 CFR 1.137(b), forms available at USPTO website – <http://www.uspto.gov>

Note: Abandonment takes place by operation of law for failure to reply to an Office action or timely pay the issue fee, not by operation of the mailing of a Notice of Abandonment.



9200/2873

DAC

TRANSMITTAL FORM (to be used for all correspondence after initial filing)		Application No.	09/413,222
		Filing Date	October 5, 1999
		First Named Inventor	Mark W. Miles
		Art Unit	2873
		Examiner Name	Dang, Hung X.
Total Number of Pages in This Submission	16	Attorney Docket Number	5652P016X

ENCLOSURES (check all that apply)		
<input type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment / Response <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> PTO/SB/08 <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Response to Missing Parts/Incomplete Application <input type="checkbox"/> Basic Filing Fee <input type="checkbox"/> Declaration/POA <input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s)	<input type="checkbox"/> After Allowance Communication to Group <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to Group (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below): <div style="border: 1px solid black; padding: 5px; margin-top: 5px;">Petition to Withdraw Holding of Abandonment (2); Copy of Notice of Alliance 10/21/02 (8); Copy of RCE 1/21/03 (1); Copy of</div>
Remarks		

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT	
Firm or Individual name	James H. Salter, Reg. No. 35,668 BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP
Signature	
Date	10/20/03

CERTIFICATE OF MAILING/TRANSMISSION			
I hereby certify that this correspondence is being deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.			
Typed or printed name	Karen Kuhner		
Signature		Date	October 20, 2003

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